

Claimant is employed by Brian Williams as a truck driver but was, in turn, subcontracted out to respondent. On April 5, 2003, claimant was directed by respondent to pick up a load of cattle in Jetmore, Kansas, and deliver it to National Beef in Dodge City, Kansas. Thereafter he was directed to pick up another load at Buffalo Feeders in Buffalo, Oklahoma. While loading his truck at Buffalo Feeders, the ramp fell off its rollers and caused claimant to slip and fall. He testified that he landed on his left hand and heard something snap in his left shoulder. Claimant told a co-worker, Ted Cochran, of the injury and once he was on the road, he contacted respondent's office, via cell phone, and told Chantal of his injury. None of these facts are controverted. To be clear, respondent does not deny these events happened. It only argues that claimant relayed another injury when he sought medical treatment later that evening.

Upon returning to his home base, claimant turned down the opportunity to make another delivery due to his injury. He went home for the evening and eventually sought treatment at an emergency room. The records from the emergency room indicate that claimant was injured when he "slipped on oil" and caught himself with his left arm.¹ The Emergency Physician Record reveals a check mark in the box that indicates the fall took place at "home."² Claimant testified that he did not provide any history to the emergency room personnel. He indicates his wife provided all the information they requested. He further denies that he slipped on oil or that the fall occurred at home.

Claimant was released with pain medications. No further treatment was recommended. It was his understanding that his shoulder would take some time to heal.

Claimant returned to work the following Monday but continued to experience pain and difficulty in steering the large trucks he is required to drive. He continued to work at his normal work duties until June 4, 2003, when he was seen by Dr. David O. King. Dr. King examined claimant and diagnosed a rotator cuff sprain. He took claimant off work and recommended surgery. Neither treatment nor temporary total disability benefits have been provided as respondent maintains claimant has failed to establish that his present physical problems arose out of or in the course of his employment.

After considering the record compiled to date, the Board finds that the ALJ's determination that claimant met his burden of proving a compensable injury should be affirmed. The determination in this case turns upon claimant's credibility. Admittedly, there is an inconsistency between the written medical records generated on April 5, 2003, and claimant's recitation of the accident. The ALJ commented that when faced with a choice between a claimant testifying in person and a written document authored by someone who

¹ P.H. Trans., Resp. Ex. 2.

² P.H. Trans., Resp. Ex. 1.

is not present and testifying, he would elect to believe the claimant.³ Moreover, he went on to note that the emergency room report describes a strikingly similar mechanism of injury. It is the location of that injury, that of slipping on oil at home, rather than slipping in the back of a cattle truck, that is inconsistent. The ALJ was undoubtedly persuaded by the claimant's credibility and the Board finds no reason to disturb that finding.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Jon L. Frobish dated September 5, 2003, is hereby affirmed.

IT IS SO ORDERED.

Dated this _____ day of October 2003.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ P.H. Trans. at 23.